

RICHARDS KIBBE & ORBE LLP  
One World Financial Center  
New York, NY 10281  
Telephone: (212) 530-1800  
Facsimile: (212) 530-1801  
Neil S. Binder  
Michael Friedman  
Keith N. Sambur

Counsel to Bank of America, N.A.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**LEHMAN BROTHERS HOLDINGS INC., *et al.*,  
Debtors.**

**x : Chapter 11  
: Case No. 08-13555 (JMP)  
: Jointly Administered  
x**

**DECLARATION OF CLARE K. PIERCE**

I, Clare K. Pierce, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

1. I have personal knowledge of each of the facts stated in this Declaration, except for those facts stated on information and belief and, as to those facts, I am informed and believe them to be true. I submit this declaration in support of the objection (the "Objection") to the Debtors' Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Approving the Assumption or Rejection of Open Trade Confirmations (the "Debtors' Motion").

2. I am an Assistant General Counsel at Bank of America, N.A. ("BofA"), one of the counterparties that filed the Objection.

3. On August 19, 2009, BofA entered into a Trade Confirmation with Lehman Commercial Paper Inc. ("LCPI") to purchase loans made to Landsource Communities Development LLC (the "BofA LSTA Confirmation"). Attached to the Objection as Exhibit G are redacted copies of the BofA LSTA Confirmation.

4. LCPI indicated, through words and conduct, that it did not intend to perform its obligations under the BofA LSTA Confirmation. In particular, LCPI stated that it was unable to process open trades for an extended period of time. This was the case even though LCPI had not yet filed a petition for relief under the Bankruptcy Code. Following LCPI's failure to provide BofA with any assurances that LCPI intended to settle the trade, BofA delivered a letter to LCPI dated October 2, 2008 in which BofA confirmed its willingness to settle the trade and provided LCPI with a time certain to complete the trade. The letter further provided that if LCPI did not respond by such time it would consider the BofA LSTA Confirmation terminated. BofA did not receive any response to these letters and on October 2, 2008 BofA terminated the BofA LSTA Confirmation prior to the commencement of LCPI's bankruptcy proceeding. Attached to the Objection as Exhibit H is a redacted copy of this October 2, 2008 letter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2008, at New York, New York.

*claire*  
\_\_\_\_\_  
Clare K. Pierce  
Assistant General Counsel  
Bank of America, N.A.